(4)

No. 08-1441

Supreme Court, U.S.
FILED
SEP 16 2009
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

STANLEY BOIM, individually and as administrator of the ESTATE OF DAVID BOIM, deceased, and JOYCE BOIM,

Petitioners,

v.

MUHAMMAD ABDUL HAMID KHALIL SALAH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

MATTHEW J. PIERS
Counsel of Record
MARY M. ROWLAND
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
70 W. Madison, Suite 4000
Chicago, Illinois 60602
(312) 580-0100

Counsel for Respondent

225214

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Petitioners' question skims on the surface of misrepresenting the Seventh Circuit's holding. Consistent with *Central Bank of Denver N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 114 S. Ct. 1439 (1994), the Circuit Court criticized the panel's holding that aiding and abetting liability was available under 18 U.S.C. § 2333; however, it never definitively reached the question. Rather, it focused on an "alternative and more promising ground for bringing donors and terrorist organizations within the grasp of section 2333." *Boim v. Holy Land for Relief & Dev.*, 549 F.3d 685, 690 (7th Cir. 2008) (*en banc*) ("*Boim III*").[1] Instead of relying on aiding and abetting liability, the Circuit Court held that providing material support (e.g., funding) to a terrorist organization provides the basis for *primary liability* so long as that support was provided after 1994, when 18 U.S.C. § 2339A was enacted. Contrary to the implication in Petitioners' question presented, *Boim III* does not "bar victims of international terrorism from recovering damages from aiders and abettors of terrorist acts." Petition at i. Rather it allows liability to reach those who provide support, financial and otherwise, to a terrorist organization, unless the funding took place before 1994—as in the case of Respondent, Muhammad Salah.

---

1. The dissent describes the holding of the majority as "express[ing] doubts about" the availability of aiding and abetting liability which "in the end neither accepts nor rejects the panel's holding that aiding and abetting liability is permitted under 18 U.S.C. § 2333." *Boim III*, 549 F.3d at 720 (Wood, J., dissenting).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iv
REASONS FOR DENYING THE PETITION	1
STATEMENT OF THE CASE	3
A. SALAH'S ARREST AND IMPRISONMENT IN ISRAEL	3
B. PETITIONERS' COMPLAINT	6
ARGUMENT	7
A. THERE IS NO SPLIT IN THE CIRCUITS; IN FACT, NO OTHER CIRCUIT COURT HAS CONSIDERED THE QUESTION.	7
B. THIS CASE IS *SUI GENERIS* AS RECOGNIZED BY THE CIRCUIT OPINION.	10

Contents

Page

C. A REVERSAL OF THE CIRCUIT COURT'S HOLDING WOULD REQUIRE A REMAND TO THE DISTRICT COURT FOR A DETERMINATION OF WHETHER THE PETITIONERS CAN ESTABLISH CAUSATION WHICH, AFTER NINE YEARS OF LITIGATION, PETITIONERS HAVE THUS FAR FAILED TO DO. 12

D. ASSISTING A PARTY TO COLLECT ON A JUDGMENT IS NOT A PROPER BASIS TO GRANT CERTIORARI. 14

CONCLUSION 16

TABLE OF CITED AUTHORITIES

Page

CASES

Almog v. Arab Bank, PLC, 471 F. Supp. 2d 257 (E.D.N.Y. 2007) 10

Boim v. Holy Land for Relief & Dev., 549 F.3d 685 (7th Cir. 2008) (*en banc*) ..... *passim*

Boim v. Holy Land for Relief & Dev., 511 F.3d 707 (7th Cir. 2007) 2, 14

Boim v. Quranic Literacy Inst., 291 F.3d 1000 (7th Cir. 2002) 2, 9, 10

Boim v. Quranic Literacy Inst., 340 F. Supp. 2d 885 (N.D. Ill. 2004) 5, 6, 7

Central Bank of Denver N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 114 S. Ct. 1439 (1994) ..... i, 1, 7, 8

City of New York v. Milhelm Attea & Bros., Inc., No. 06-CV-3620, 2009 WL 701005 (E.D.N.Y. March 11, 2009) 8

Freeman v. DirectTV, Inc., 457 F.3d 1001 (9th Cir. 2006) 8

Jones v. Global Info. Group, Inc., No. 3:06-00246-JDM, 2009 WL 799743 (W.D. Ky. March 25, 2009) 8

Cited Authorities

	Page
Khulumani v. Barclay Nat'l Bank, Ltd., 504 F.3d 254 (2d Cir. 2007), *aff'd sub nom., American Isuzu Motors, Inc., Ntsebeza*, __ U.S. __, 128 S. Ct. 2424 (2008)	9
Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 43 S. Ct. 422 (1923)	14
Linde v. Arab Bank, PLC, 384 F. Supp. 2d 571 (E.D.N.Y. 2005)	9
Mujica v. Occidental Petroleum Corp., 381 F. Supp. 2d 1164 (C.D. Cal. 2005)	9
Rothstein v. UBS AG, No. 08 CIV 4414, 2009 WL 2581610 (S.D.N.Y. Aug. 23, 2009)	8
Stutts v. De Dietrich Group, No. 03-CV-4058, 2006 WL 1867060 (E.D.N.Y. June 30, 2006)	9
Weiss v. National Westminster Bank PLC, 453 F. Supp. 2d 609 (E.D.N.Y. 2006)	10

Cited Authorities

Page

STATUTES

18 U.S.C. § 2333 ..... i, 1, 7, 9, 11, 14

18 U.S.C. § 2339A ..... i, 11

18 U.S.C. § 2339B 10

18 U.S.C. § 2339C 10

18 U.S.C. § 2707 8

28 U.S.C. § 2109 9

REASONS FOR DENYING THE PETITION

First, there is no split in the circuits on the legal issue raised in this petition. In fact, *no other circuit court* has considered the application of *Central Bank* to the statute at issue here, 18 U.S.C § 2333. Any consideration by this Court is premature prior to other circuits having the opportunity to render what very well may be unanimous opinions on the legal question presented.

Second, this case concerns a death that occurred on May 13, 1996 and alleges conduct by Respondent which, it is uncontested, took place before January 25, 1993. Therefore, the Respondent's conduct took place long before several of the pertinent statutes were enacted. This *sui generis* fact pattern will not be repeated, rendering this a particularly inappropriate case for consideration by this Court. In fact, in explaining the impact of the shift in the legal underpinnings giving rise to liability under § 2333, the *en banc* court stated: "Few future cases will be affected by the timing issue, because few such cases will involve donations that were made after section 2333 was enacted in 1990 or re-enacted in 1992 but that ceased before 1994."[2] *Boim III*, 549 F.3d at 691. This observation by the Circuit Court regarding the impact of its shift in analysis makes this a particularly inappropriate case for this Court to grant certiorari.

Third, Petitioners' request this Court to grant certiorari to find that 18 U.S.C. § 2333 allows aiding and

---

2. The truth of this statement renders the arguments raised by amici, Zionist Organization of America, unpersuasive.

abetting liability. However, the original circuit case in this matter, *Boim v. Quranic Literacy Inst.*, 291 F.3d 1000 (7th Cir. 2002) ("*Boim I*"), found that aiding and abetting liability was available. The parties then litigated the case for several years understanding this to be the operative standard. Following disposition on the merits, the panel affirmed its previous holding that aiding and abetting liability was available, but found that Petitioners had failed to establish actual or proximate cause as required for secondary liability under traditional tort principles. *Boim v. Holy Land Found.*, 511 F.3d 707 (7th Cir. 2007) ("*Boim II*"). *Boim II*, which adopted Petitioners' position regarding aiding and abetting liability, spelled out in great detail how the Petitioners had presented woefully inadequate admissible evidence to establish that Salah's conduct was a cause in fact of David Boim's murder. Knowing they had no evidence of causation to present on remand, the Petitioners requested the rehearing by the entire Seventh Circuit. Therefore, if this Court grants the relief requested, Petitioners will be in the same position they were in prior to the *en banc* hearing and will face a remand to the district court for what will be vigorously contested litigation regarding their inability to establish proximate and actual causation between Respondent's alleged conduct and the injury suffered. This too renders this case inappropriate for certiorari.

Finally, Petitioners' primary basis for requesting this Court to revisit the Circuit's holding, which paved the way for liability findings against the organizational defendants' liability, is because "[a]pproximately 1.4 million dollars in bank accounts and safe deposit boxes held in respondent Salah's name . . ." was seized by the

FBI in June of 1998 and would be able to "satisfy [Petitioners'] judgment . . . if respondent Salah were held liable." Pet. at 9. Assisting individual Petitioners to collect on a judgment is not a proper basis to grant certiorari.

STATEMENT OF THE CASE

A. SALAH'S ARREST AND IMPRISONMENT IN ISRAEL

This factually complex case alleges conduct by Respondent, Muhammad Salah ("Salah" or "Respondent"), that terminated on January 25, 1993, when Salah, a Palestinian-American, was arrested by Israeli military authorities. While in Israeli custody, Salah purportedly gave statements regarding the operations of Hamas and his role in disbursing roughly $140,000 in the West Bank prior to his arrest. Salah argued that these purported statements made while in the custody of the Israeli authorities should be disregarded because they were made under conditions of duress and coercion, including the threat and use of physical torture. In support of these assertions, Salah produced U.S. Embassy cables written by the United States Consulate in Tel Aviv who visited Salah and sent reports to Washington. According to the March 4, 1993 cable:

> Mr Salah had made allegations of mistreatment very similar to those made to U.S. consul [by others] those include confinement in a punishment cell known as the 'refrigerator' and threatened beatings for failure to sign a Hebrew language statement.

> Mr. Salah stated that during his initial interrogation he was forced to stand naked in front of his interrogator and threatened with a beating if he failed to sign a statement.

(Embassy Cables at Bates No. S0242).[3] According to another cable, Salah reported "two of his three interrogators have become more aggressive . . ." and that "he was hooded, tied with his arms behind him and forced to sit in a low stool." (Embassy Cables at Bates No. S0253). On the fourth consular visit, Salah explained "that a Major Haim had threatened to beat him as he stood naked in a room, and said he signed the statement to avoid the beating. As to his current conditions Mr. Salah says that he is still isolated. He spends each week in the interrogation room but is rarely interrogated now. His weekends are in the small, closet-like enclosure called the 'refrigerator.'" (Embassy Cables at Bates No. S0257). In November 1993, the consular official reported,

> It appears that the conditions of Salah's imprisonment were worse than we had originally been informed. During his confinement, he was kept in a room measuring 3 feet by 5 feet in which he positions himself diagonally in order to sleep . . . Salah is currently in a cell with 20 other prisoners. They have to rotate to sleep on the floor. The rooms are cold, and there is no hot water. Very often there is no running water at all.

(Embassy Cables at Bates No. S0300).

---

3. The Embassy Cables were attached to Salah's Response to Plaintiffs' Motion for Summary Judgement. R. 289.

During a hearing before the military court, the GSS interrogator admitted that Salah was interrogated without interruption for more than 24 hours, that loud music was played in the detention center, and that Salah was threatened with 20 years imprisonment without a trial. According to a cable from September of 1993, Salah "was threatened with a life sentence . . . if he continued to insist on a trial and was told that his only hope for a lesser sentence was to agree to a plea bargain." (Embassy Cables at Bates No. S0284). In fact, the next month, in October of 1993, after Salah refused to accept a plea bargain, the court granted the prosecution's request to add another set of charges to his charge sheet. (Embassy Cables at Bates S0291). Despite this evidence, the magistrate judge, without a hearing, credited these statements in granting summary judgment in favor of the Petitioners. *Boim v. Quranic Literacy Inst.*, 340 F. Supp. 2d 885, 914-916 (N.D. Ill. 2004).

Salah fared no better in the military tribunal that presided over his case. When the military court ordered Salah's prosecutors to submit classified documents regarding GSS interrogation guidelines to the court for its review, the GSS flatly refused. Instead of compelling the GSS to comply with its decision, the military court rescinded its order, stating that it could not require the GSS to comply. At another court appearance, a representative of the American Embassy attended and filed the following report: "the prosecution refused to allow Mr. Salah to speak, indicating to the Judge that Salah was under a special order prohibiting him from talking to anyone and that [even] the court would have to be cleared." (Embassy Cables at Bates No. S0242).

The military court judge "brought Salah and the prosecutor privately into his chambers, with the U.S. Vice-Consul present, the judge informed Salah that he could talk about anything *except* his interrogation and the charges." *Id.* Ultimately, responding to threats of long prison terms, Salah pled guilty to "membership and activity in an illegal organization" and an Israeli military court sentenced Salah to five years imprisonment.

B. PETITIONERS' COMPLAINT

On May 13, 1996, Petitioner's son, David Boim, was killed by shots fired from a passing car while waiting with other students at a bus stop near Beit El in the West Bank. The Complaint alleged that the shooters, Amjad Hinawi ("Hinawi") and Khalil Tawfiq Al-Sharif ("Al-Sharif"), were both members of Hamas and that Salah and the organizational defendants are liable because of support they provided to Hamas. By May 13, 1996, Salah had been imprisoned continuously by Israeli authorities for approximately 40 months. There was no evidence that Salah gave money to Hamas, or to anyone whom Petitioners contend works for Hamas, after January 1993. There was no evidence that Salah has ever met or communicated with Hinawi or Al-Sharif, or that Hinawi or Al-Sharif ever received any money, weapons, transportation, or training directly from Salah.

In terms of Salah's pre-January 25, 1993 alleged involvement with Hamas, Salah denied Petitioners' allegations in his Answer and Amended Answer to the First Amended Complaint. R. 208, 234. However, in July of 2004, while the present case was pending, the

United States indicted Salah and charged him, based on this same 1993 conduct, with membership in a RICO conspiracy, the RICO enterprise being Hamas.[4] *Boim*, 340 F. Supp. 2d at 894. In order not to compromise his defense in the criminal case, Salah responded to all substantive questions at his deposition by invoking his Fifth Amendment right to avoid self-incrimination. The district court accordingly struck his Answer.

ARGUMENT

A. THERE IS NO SPLIT IN THE CIRCUITS; IN FACT, NO OTHER CIRCUIT COURT HAS CONSIDERED THE QUESTION.

Aside from the Seventh Circuit, no circuit court has considered whether *Central Bank*, 511 U.S. 164, when applied to an action filed pursuant to 18 U.S.C. § 2333, forbids or allows secondary liability based upon aiding and abetting. That alone is reason to deny the petition. The question of whether a statutory cause of action allows for aider and abettor liability is one of interpretation of congressional intent, which necessarily must be decided in the context of the particular statute in question. If the question of whether aiding and abetting liability under § 2333 is to be considered by this Court, the prudent path is to allow other circuits to

4. The Petitioners fail to inform the Court that, in addition to being convicted of obstruction, Salah was acquitted by a unanimous jury of the far more serious charge, operating the criminal enterprise of Hamas. Pet. at 5; *United States v. Salah*, No. 03 CR 978 (N.D. Ill.) (St. Eve, J.). Moreover, a month prior to the criminal trial, the government dismissed any charges of providing material support to Hamas.

issue opinions on the matter, and then discern whether there is even a conflict to resolve. Because Petitioners cannot argue a split in the circuits, they frame the issue as a "conflict among federal courts over whether" *Central Bank* applies to all instances of aiding and abetting. Pet. at 14. This is neither an accurate assessment of the state of the law nor the situation addressed in Supreme Court Rule 10(a).

First, several cases, consistent with the Circuit opinion, rely on *Central Bank* to refuse to allow aider and abettor liability where the pertinent statute is silent on the matter. *Freeman v. DirectTV, Inc.*, 457 F.3d 1001, 1007 (9th Cir. 2006) (no aider and abettor liability under the Electronic Communications Privacy Act, which imposes civil liability on providers of electronic communication services that knowingly divulge the contents of those communications); *Jones v. Global Info. Group, Inc.*, No. 3:06-00246-JDM, 2009 WL 799743 (W.D. Ky. March 25, 2009) (quoting *Boim III* approvingly and finding no aider and abettor liability under 18 U.S.C. § 2707, the Stored Wire and Electronic Communications and Transactional Records Access Act); *City of New York v. Milhelm Attea & Bros., Inc.*, No. 06-CV-3620, 2009 WL 701005, *6 (E.D.N.Y. March 11, 2009) (no aider and abettor liability under the Contraband Cigarette Trafficking Act). *See also Rothstein v. UBS AG*, No. 08 CIV 4414, 2009 WL 2581610, *3, n.2 (S.D.N.Y. Aug. 23, 2009) (recognizing that in *Boim III*, the Seventh Circuit held that "statutory silence on the subject of secondary liability means that there is none; and section 2333(a) does not mention aiders and abettors or other secondary actors"). The only circuit case that extends aiding and abetting liability post *Central Bank* is a Second Circuit

per curiam opinion arising out of the Alien Tort Claim Act ("ATCA"). In *Khulumani v. Barclay Nat'l Bank, Ltd.*, 504 F.3d 254 (2d Cir. 2007) (per curiam), *aff'd sub nom. American Isuzu Motors, Inc. v. Ntsebeza*, __U.S. __, 128 S. Ct. 2424 (2008)(affirming pursuant to 28 U.S.C. § 2109 because of absence of a quorum of qualified justices), the Court disallowed plaintiffs' claim for aiding and abetting under the Torture Victim Protection Act ("TVPA") to proceed past the dismissal stage, but allowed an aiding and abetting claim to proceed under the ATCA. *See also Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164, 1171 (C.D. Cal. 2005) (before dismissing the TVPA action pursuant to the political question doctrine, opining that although the plaintiffs did not plead an aiding and abetting theory, *Central Bank* can be distinguished in the TVPA context because *Central Bank* involved an implied right of action, whereas TVPA provides an express right of action).

Finally, there are two district court opinions, decided before the *en banc* opinion in *Boim III*, that adopt *Boim I* and allow plaintiffs to proceed on an aiding and abetting theory for liability under 18 U.S.C. § 2333. Both of these cases arise in the same district court in New York. *See Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571, 583 (E.D.N.Y. 2005) (adopting the reasoning in *Boim I* to allow the case to proceed under a theory of aiding and abetting liability); *Stutts v. De Dietrich Group*, No. 03-CV-4058, 2006 WL 1867060, * 3 (E.D.N.Y. June 30, 2006) ("Both parties cite [*Boim I*] . . . [and] the Court . . . adopts its reasoning."). If the Second Circuit is asked to review one of these decisions, it will now have the benefit of the entire Seventh

Circuit's thinking on the matter. This Court should not grant certiorari until the Second Circuit has had an opportunity to consider the question.[5]

B. THIS CASE IS *SUI GENERIS* AS RECOGNIZED BY THE CIRCUIT OPINION.

Second, this case was filed on the eve of the expiration of the statute of limitations–meaning 4 years had lapsed between the murder and the Complaint in this case. Moreover, for the 40 months prior to the murder, Salah sat in an Israeli military prison. Therefore, Salah's conduct at issue took place long before several of the pertinent statutes at issue were enacted. The fact that Salah's relevant conduct took place well before the pertinent statutes were enacted led the Court of Appeals to determine that Respondent Salah could not be held liable. This *sui generis* fact pattern, not possible of being repeated given the lapse of time, renders this case particularly inappropriate for

5. Two other district cases out of the Eastern District of New York cite *Boim I* approvingly, but essentially rely on the analysis contained in *Boim III* to find liability may affix to defendants. *Weiss v. National Westminster Bank PLC*, 453 F. Supp. 2d 609, 613 (E.D.N.Y. 2006) ("Violations of 18 U.S.C. § 2339B and § 2339C are recognized as international terrorism under 18 U.S.C. 2333(a))(citations omitted); *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d 257, 268 (E.D.N.Y. 2007)(essentially adopting the strict liability standard approved in *Boim III*, "violations of Sections 2339A, 2339B(a)(1), and 2339C can serve as predicate crimes giving rise to liability under the [Anti-Terrorism Act]. . . . Thus . . . plaintiffs have sufficiently alleged that they were injured by reason of an act of international terrorism.") (citations omitted).

consideration by this Court. In fact, in explaining the impact of the shift in the legal underpinnings establishing liability–shifting from aiding and abetting liability to "a chain of explicit statutory incorporations by reference" that allowed for a broader basis of primary liability, the *en banc* court stated:

> Only because this is a very old case–David Boim was killed 12 years ago–does the 1994 effective date of section 2339A, two years before the killing, present an obstacle to liability, though only with respect to Salah and possibly Holy Land Foundation.... Few future cases will be affected by the timing issue, because few such cases will involve donations that were made after section 2333 was enacted in 1990 or re-enacted in 1992 but that ceased before 1994.

Boim III, 549 F.3d at 691.

A case so unique and so limited in its practical import is not appropriate for certiorari.

C. A REVERSAL OF THE CIRCUIT COURT'S HOLDING WOULD REQUIRE A REMAND TO THE DISTRICT COURT FOR A DETERMINATION OF WHETHER THE PETITIONERS CAN ESTABLISH CAUSATION WHICH, AFTER NINE YEARS OF LITIGATION, PETITIONERS HAVE THUS FAR FAILED TO DO.

Petitioners were granted summary judgment by the district court on a theory that Salah had aided and abetted Hamas, and was therefore liable for the murder of David Boim. Salah conceded his invocation of his Fifth Amendment rights rendered him unable to contest a finding that he provided funding to Hamas prior to January of 1993. However, he vigorously disputed that such a contribution would be enough to establish his liability as an aider and abettor, under common law tort principles, for a random act committed over 40 months after his arrest.[6] Salah appealed that ruling and the panel opinion reversed, finding that the magistrate judge had failed to require plaintiffs to show any proximate and actual causation as to either Salah or the two organizational defendants against whom summary judgment had been granted.[7] Unhappy with this ruling,

---

6. The evidence regarding the two organizational defendants against whom summary judgment was granted did not establish any funding to Hamas, but rather established funding to *zakat* committees that ran charitable organizations like hospitals, which were run by members of Hamas. *Boim III*, 549 F.3d at 706 (Rovner, J., dissenting)

7. The Panel also found that Petitioners had failed to produced sufficient evidence to establish that Hamas was (Cont'd)

even though the panel adhered to Petitioners' current position that aiding and abetting liability was available, Petitioners sought a rehearing *en banc*.

What the *en banc* holding did was to obviate the requirement that Petitioners establish the elements required in every common law tort action: causation. Instead, the Circuit Court held that providing funding was enough to establish liability. The *en banc* opinion obviated the causation requirement by what it referred to as a "a chain of explicit statutory incorporations by reference." *Boim III*, 549 F.3d at 690. This statutory gymnastics made it possible for Petitioners to hold the organizational defendants liable; hence, Petitioners are not seeking certiorari against those defendants. But these statutory gymnastics required dismissing the case against Salah because of the undisputed cut-off date of his involvement. The resulting *en banc* opinion imposes strict liability on funders of terrorist organizations, describing the statutory path as "an alternative and more promising ground for bringing donors to terrorist organizations within the grasp of section 2333." *Boim III*, 549 F.3d at 690. While the Petitioners lost the battle in terms of Salah's liability, they won the war in terms

---

(Cont'd)

responsible for the killing of David Boim, a fact necessary to link Salah to the injury at all. *See Boim III*, 549 F.3d at 715 (Rovner, J., dissenting) (criticizing the sources, including newspaper accounts, and hearsay testimony based on newspaper accounts, websites, and unauthenticated documents in Arabic, relied upon by the plaintiffs' expert to opine that Hamas was responsible, "the glaring lack of any information confirming the authenticity and accuracy of [the expert's] sources raises obvious doubts about the reliability of his opinions. . . .").

of relaxing the requirement under § 2333 that Plaintiffs comply with traditional tort principles and establish causation. *See Boim III*, 549 F.3d at 724 (discussing why dispensing with the causation requirement is ill-advised) (Wood, J., dissenting).

Relief in this Court, a finding that Petitioners can pursue liability against Salah on the basis of aiding and abetting, is exactly what Petitioners attempted to do during the first seven years of this litigation. *Boim II* found they had failed. Prevailing in this Court will put the Boims exactly where they were throughout this litigation, facing standards that the Panel found they did not achieve and the Circuit all but admitted were more difficult to meet.

This undeniable truth makes this case uniquely inappropriate for this Court's review.

D. ASSISTING A PARTY TO COLLECT ON A JUDGMENT IS NOT A PROPER BASIS TO GRANT CERTIORARI.

As Supreme Court Rule 10 makes clear, the grant of a petition for certiorari, which is not a matter of right, requires "compelling reasons." In dismissing a writ of certiorari in *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393, 43 S. Ct. 422, 423 (1923), the Court defended its careful consideration of certiorari:

> "If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to

> dispose of the case before us on the merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals."

The holding in this case, while significant to both the Petitioners and the Respondent, presents no reason for this Court to examine it. In fact, the section of the Petition addressing the issue why this Court should hear the case essentially argues that Respondent has assets, seized by the federal government in an unrelated action, which could be used to pay the judgment. Pet. at 9. In addition to that not providing an appropriate basis for this Court to exercise its discretion to hear a case, Petitioners' assertions of the monies involved in the forfeiture action are wildly inaccurate. Moreover, even if that kind of money were sitting in a seized account, it is not at all clear that Petitioners would prevail on a claim to such funds. In any event, the collection of the judgment in this matter is of no concern to this Court. Certiorari must be denied.

CONCLUSION

Respondent respectfully requests this Court to deny the petition for a writ of certiorari.

Dated: September 16, 2009

Respectfully submitted,

MATTHEW J. PIERS
Counsel of Record
MARY M. ROWLAND
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
70 W. Madison, Suite 4000
Chicago, Illinois 60602
(312) 580-0100

Counsel for Respondent